IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2633 OF 2006

Jalal Abdul Rajak Tamboli ...Applicant

vs.

Dattatray Bhimrao Dhotre and anr. ...Respondents

Mr.Amit Shete for the Applicant
Mr.S.V.More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : DECEMBER 14,2006.

P.C.:

1. Office endorsement shows that the first Respondent is duly served by a private notice and Affidavit of service is filed. The Advocate for the Applicant pointed out that private notice is served to the first Respondent firstly in August 2006 and thereafter, in October 2006. The second notice is served on the basis of the order dated 28th August 2006 which records that none appeared for the first Respondent though he is served. The Advocate for the Applicant states that postal acknowledgment of notice dated 13th October 2006 has been signed by the first Respondent. Office copy of the notice dated 13th October 2006 records that the notice has been issued for final disposal.

2. The Applicant is the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. By order dated 12th June 2006, the said complaint has been dismissed

for default in exercise of the power under section 256 of the Code of Criminal Procedure, 1973 which has the effect of acquittal of the first Respondent.

3. The learned Advocate for the Applicant submitted that the Applicant was diligently prosecuting the complaint right from the year 2005 and therefore, the learned Judge ought not to have taken a harsh view of the matter and dismissed the complaint. He has invited my attention to the true copy of the Roznama annexed to the application.

4. I have perused the Roznama. From 19th March 2005 to 4th March 2006, the complaint was fixed on various dates. I find from the Roznama that on none of the said dates the complainant is shown as absent. On 4th March 2006, the complaint was adjourned to 24th April 2006. On that day, the Roznama records that the accused and the complainant were present but Affidavit of the complainant was not filed. In the Roznama recorded on 24th April 2006 it is recorded that the case was adjourned to 20-5-2006/12-6-2006. The Roznama discloses that when the complaint was called out on 12th June 2006, the Applicant was absent and therefore, order of dismissal was passed.

5. Perusal of the Roznama clearly shows that the Applicant has prosecuted the complaint diligently by remaining present

on almost all the dates which were fixed before the Trial Court. In my view, the learned Trial Judge ought to have given one more opportunity to the Applicant and ought not to have dismissed the complaint considering the fact that the Applicant has been regularly attending the court. Hence, impugned order deserves to be quashed and set aside.

6. Hence, I pass the following order :

i) The order dated 12th June 2006 passed by the Judicial Magistrate First Class, Pandharpur is quashed and set aside and the Complaint bearing No. STC 836 of 2005 is restored to file.

ii) The learned Magistrate will issue notices to both the parties of the date fixed in the complaint.

iii) Application/Appeal is accordingly allowed.

iv) Writ be sent immediately.

JUDGE